



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095

(603) 271-3644 FAX (603) 271-2181



September 25, 2003

Champlain Oil Co.
Attn: Dennis Boise
PO Box 2126
S Burlington, Vermont 05403-2126

**NOTICE OF NON-COMPLIANCE and
PERMIT REVOCATION – NCPR # 03-011**

RE: NEWPORT, JIFFY MART, EXISTING UNDERGROUND STORAGE TANK
FACILITY (UST #A-0110622) (DES #199810073)

Dear Mr. Boise:

The New Hampshire Department of Environmental Services (“DES”) is hereby notifying you that the above-referenced facility, located at 36 Elm Street, Newport, NH is not in compliance with New Hampshire Code of Administrative Rules Env-Wm 1401, regulating Underground Storage Facilities. On July 3, 2003 a DES inspector conducted a compliance audit at the facility. A written document, describing the deficiencies was provided to the facility representative. This document required the facility be returned to compliance within 45 days, and DES be notified of the corrective measures taken. Compliance has not been achieved. **Failure to achieve compliance with the following deficiencies within 90 days from the date of this Notice of Non-Compliance and Permit Revocation (“Notice”) will result in revocation of your Permit-to-Operate on December 24, 2003. This letter contains important compliance and procedural information. Please read it carefully.**

Env-Wm 1401.11 Inventory Monitoring

Env-Wm 1401.11 requires inventory monitoring be conducted and inventory records be maintained on motor fuel, hazardous substance and bulk heating oil systems without secondary containment and leak monitoring for both tank and piping. DES has determined that inventory records were not available at the facility during the inspection. Inventory monitoring shall include the following: total liquid gallon of sales or metered uses, product level, and product loss/gain. The owner certifying accuracy must sign the inventory. One month of inventory monitoring shall be performed for one 6,000-gallon diesel and three 6,000-gallon gasoline UST systems (Tanks 1 - 4) and provided to DES.

2. Env-Wm 1401.25 Spill Containment and Overfill Protection

Env-Wm 1401.25 requires spill containment devices be installed and maintained in good working order on all UST systems. DES has determined that the required spill containment devices were not maintained in good working order. The spill containment devices for Tanks 1 - 4 shall be repaired to enable the devices to collect and hold a minimum 5-gallon spill during a product delivery. Documentation of the repair shall be provided to DES.

3. Env-Wm 1401.25 Spill Containment and Overfill Protection

Env-Wm 1401.25 requires overfill protection devices be installed and maintained in good working order on all UST systems. DES has determined that the overfill protection devices for Tanks 1 - 4 were not installed at the required 90% alert or 95% shut off level or operating properly. The overfill protection devices shall be properly installed at the required 90% alert or 95% shut off level and documentation of the installation shall be provided to DES.

4. Env-Wm 1401.29 Release Detection for Tanks without Secondary Containment

Env-Wm 1401.29 requires release detection for all underground motor fuel, waste oil, hazardous materials, and bulk heating oil storage tank systems without secondary containment and leak monitoring. DES has determined that release detection had not been performed. Release detection test documentation from the automatic tank gauging device for Tanks 1 – 4 shall be performed for the system and shall be provided to DES.

5. Env-Wm 1401.30 Release Detection for Piping

Env-1401.30 requires records be maintained for line leak detector tests. The DES has determined that the passing annual line leak detector tests had not been performed. A passing annual line leak detector test for Tanks 1 – 4 shall be provided to DES.

6. Env-Wm 1401.31 Operation of Leak Monitoring Equipment

Env-Wm 1401.31 requires leak monitoring equipment and devices to be maintained in good working order at all times to continuously perform their original design function and to be tested annually for proper operation. DES has determined that the leak monitor for piping was in alarm condition and the piping system was not temporarily closed. Provide leak monitor replacement or maintenance records or notify DES that the tank systems are temporarily closed. DES has determined that the annual test documentation was not available for the tank and piping leak monitoring equipment and devices. The annual test documentation for the tank and piping leak monitoring equipment and devices for Tanks 1 – 4 shall be provided to DES.

7. Env-Wm 1401.32 Corrosion Protection for Steel Tanks

Env-Wm 1401.32 requires corrosion protection systems be tested within six (6) months of installation and every three (3) years thereafter. Also, monitors for impressed current systems shall be inspected every 60 days to ensure equipment is running properly. DES has determined that corrosion (cathodic) protection testing had not been performed. Corrosion protection test results for all five UST systems and documentation that the impressed current system has been inspected every 60 days shall be provided to DES.

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In addition, Env-Wm 1401.10(a) requires owners of underground storage facilities for oil to maintain financial responsibility for costs associated with cleanup of releases from systems, the implementation of corrective measures, and compensation for third party damages in the amount equal to or greater than \$1,000,000 per occurrence. Env-Wm 1401.10(c) provides that the financial responsibility requirement may be satisfied if the owner is eligible for reimbursement of costs associated with cleanup of releases from the Oil Discharge and Disposal Cleanup Fund ("the Fund"). Eligibility for the Fund is contingent upon achieving and maintaining compliance with statutory (RSA 146-C) and regulatory (Env-Wm 1401) requirement. This facility has not achieved compliance, consequently, the Fund is not available to you as a financial responsibility mechanism.

In accordance with RSA 146-C:4 and Env-Wm 1401.07(a), no person shall own or operate an underground storage facility without a permit issued by DES. Within 30 days from the date of the permit revocation the facility shall be closed in accordance with Env-Wm 1401.18 for permanent closure.

Based on the compliance deficiencies described above, DES believes this facility poses a potential substantial threat to the surface and groundwater of the state. Therefore, in accordance with RSA 146-C:4 and Env-Wm 1401.09, if compliance as requested above is not achieved within ninety (90) days of the date of this Notice your Permit-to-Operate (UST Permit #0110622) shall be revoked effective **December 24, 2003**. Within thirty (30) days of the date of permit revocation all regulated substances must be removed from the UST systems at this facility. If the facility achieves compliance during the ninety (90) day period, it is necessary that documentation be submitted to DES verifying that compliance has been attained.

You have the right to a hearing to contest these allegations before the proposed license action is taken. The hearing would be a formal adjudicative proceeding pursuant to RSA 541-A:31, at which you and any witnesses you may call would have the opportunity to present testimony and evidence as to why the proposed action should not be taken. All testimony at the hearing would be under oath and would be subject to cross-examination. If you wish to have a hearing, one will be scheduled promptly.

RSA 541-A:31 III(e) provides that you have the right to have an attorney present to represent yourself at your own expense. If the Permit is an occupational license, under RSA 541-A:31, III(f) you have the right to request DES to provide a certified shorthand court reporter at your own expense. **Such request must be submitted in writing at least 10 days prior to the proceeding.**

You may waive your right to a hearing. If you waive the hearing, DES is prepared to proceed with the actions as stated above. You should notify DES of your decision by filling out and returning the enclosed form.

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If there are any questions concerning the above, I may be contacted at the Waste Management Division at (603) 271-1165.

Sincerely,

 **COPY**

Lynn A. Woodard, P.E.

Supervisor

Oil Compliance and Initial Response Section

CERTIFIED MAIL # 7000 1670 0000 0585 2214

cc: Michael P. Nolin, Commissioner
Mark Harbaugh, DES Legal Unit
Fred McGarry, P.E., Chief Engineer, WMD
George Lombardo, P.E., WMD
Tom Beaulieu, WMD
Health Officer, Town of Newport